

1 LAURENCE F. PULGRAM (CSB No. 115163)
lpulgram@fenwick.com

2 JENNIFER L. KELLY (CSB No. 193416)
jkelly@fenwick.com

3 CLIFFORD C. WEBB (CSB NO. 260885)
cwebb@fenwick.com

4 FENWICK & WEST LLP
555 California Street
5 San Francisco, CA 94104
Telephone: 415.875.2300
6 Facsimile: 415.281.1350

7 Attorneys for Plaintiff and Counterdefendant
8 NEXTDOOR.COM, INC. and Counterdefendant
9 PRAKASH JANAKIRAMAN

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NEXTDOOR.COM, INC., a Delaware
14 corporation,

15 Plaintiff,

16 v.

17 RAJ ABHYANKER, an individual,

18 Defendant.

19 RAJ ABHYANKER, an individual,

20 Counterclaimant,

21 v.

22 NEXTDOOR.COM, INC., a Delaware
23 corporation; PRAKASH JANAKIRAMAN, an
24 individual; BENCHMARK CAPITAL
25 PARTNERS, L.P., a Delaware limited
26 partnership; BENCHMARK CAPITAL
27 MANAGEMENT CO. LLC, a Delaware limited
28 liability company; SANDEEP SOOD, an
individual; MONSOON ENTERPRISES, INC., a
California corporation, and DOES 1-50,
inclusive,

Counterdefendants.

Case No.: 3:12-cv-05667-EMC

**COUNTERDEFENDANTS'
OBJECTIONS TO EVIDENCE IN
OPPOSITION TO ABHYANKER'S
MOTION TO DISQUALIFY**

Date: June 6, 2013

Time: 1:30 p.m.

Judge: Honorable Edward M. Chen

Plaintiff and Counterdefendant Nextdoor.com, Inc. (“Nextdoor.com”) and Counterdefendant Prakash Janakiraman (“Janakiraman”) (collectively “Counterdefendants”) respectfully submit the following evidentiary objections to Defendant and Counterclaimant Raj Abhyanker’s (“Abhyanker”) Motion to Disqualify. Civil Local Rule 7-5(b) provides that “[a]n affidavit or declarations may contain only facts, must conform as much as possible to the requirements of Fed. R. Civ. P. 56(e), and must avoid conclusions and argument,” and that “[a]n affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Civil L.R. 7-5(b). Federal Rule of Civil Procedure 56(c)(4) similarly provides that a “declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). Abhyanker’s supporting declaration contains numerous baseless and objectionable assertions that are not competent or evidence and should be stricken under Civil Local Rule 7-5(b). *See* Dkt. 73 (“Abhyanker Decl.”).

OBJECTION NUMBER 1

“I hired Fenwick & West (‘Fenwick’) to represent me and my company LegalForce, Inc. between 2006 and 2007 in matters related to corporate law. Particularly, in 2006, I signed an executed **Engagement Letter** with Fenwick & West” Abhyanker Decl. ¶ 2 (emphasis added).

GROUND FOR OBJECTION NUMBER 1:

Best evidence. Fed. R. Evid. 1001, 1002. Abhyanker’s characterization of LegalForce’s Engagement Letter with Fenwick & West violates the best evidence rule in asserting that Fenwick & West represented Abhyanker personally. The Engagement Letter (Baker Decl. Ex. 20) speaks for itself and is the best evidence of the engagement.

OBJECTION NUMBER 2

“In or about October 2007, LegalForce, Inc. was dissolved on recommendation by its Board of Directors. In the wind-down, I **purchased** all of the company’s assets and liabilities, including all of its trade secrets – the same trade secrets which are at the heart of the current suit in exchange for releasing the company from over \$300,000 debt owed to me and in exchange for personally assuming all \$150,000 outstanding convertible notes – thus **becoming the**

GROUND FOR OBJECTION NUMBER 2:

Best evidence. Fed. R. Evid. 1001, 1002. Abhyanker describes complex transactions and relies on their effect in claiming the authority to assert LegalForce’s attorney-client relationship for the purposes of attempting to disqualify Fenwick & West. *See also* Dkt. 70 (“Motion”) at 6-7. The instruments affecting these transactions are themselves the best evidence; Abhyanker has not introduced those instruments or provided any justification for not doing so; and Abhyanker’s description and characterization of them should

1 **successor in interest** to LegalForce, Inc.”
2 Abhyanker Decl. ¶ 3 (emphasis added).

therefore be excluded.

Inadmissible legal conclusion. Fed. R. Evid. 701. Abhyanker’s assertion that he is the “successor in interest to LegalForce, Inc.” is a legal conclusion and should be excluded. Fed. R. Evid. 701 (precluding lay opinion); *see also Hoover Community Hotel Dev. Corp. v. Thomson*, 167 Cal. App. 3d 1130, 1136 (1985) (declaration stating duration of five year period in contract was inadmissible legal conclusion; “at best it is a conclusion of law which is utterly ineffective to raise a triable issue of fact. It is no more than an expression of the declarant’s personal opinion to which he could not competently testify”); *Pierce v. Kaiser Found. Hospitals*, CV 09-03837 WHA, 2010 WL 4590930, at *8 (N.D. Cal. Nov. 4, 2010) *aff’d*, 470 F. App’x 649 (9th Cir. 2012) (declaration that opponent “breached” agreement or “violated” laws is inadmissible legal conclusion).

12 **OBJECTION NUMBER 3**

13 “The ownership of intellectual property
14 developed by LegalForce, Inc. and
15 protected through **instruments negotiated
and designed by Fenwick** is a **central
issue** in the instant case.” Abhyanker Decl.
16 ¶ 4 (emphasis added).

GROUND FOR OBJECTION NUMBER 3:

Best evidence. Fed. R. Evid. 1001, 1002. Abhyanker describes documents purportedly protecting alleged trade secrets supposedly drafted by Fenwick & West without attaching the actual agreements. The alleged instruments, if any exist, are in Abhyanker’s possession (Baker Decl. ¶ 21); they are the best evidence of their content; and Abhyanker has provided no basis for not introducing them. His description and characterization of them should be excluded.

Inadmissible lay opinion. Fed R. Evid. 701. Whether or not the missing documents are a “central issue” in the action is a legal conclusion to be determined by the Court based on their content, not based on opinion of a party.

22 **OBJECTION NUMBER 4**

23 “In or about December 2012, Sood admitted
24 . . . providing information related to the
25 LegalForce trade secrets to a co-founder of
the Plaintiff’s company Nextdoor.com, Inc.
26 (See Exhibit A). This information was
provided to the Plaintiff by Sood in
27 violation of Sood’s **independent
contractor, non-disclosure, and
confidentiality agreements** with
28 LegalForce, Inc. signed in 2006.”

GROUND FOR OBJECTION NUMBER 4:

No foundation or personal knowledge. Fed. R. Evid. 602. Abhyanker provides no foundation for his contention that Counterdefendant Sandeep Sood (“Sood”) admitted providing trade secret information, in fact provided trade secret information, or violated any confidentiality agreement. The declaration describes no facts supporting such assertions, referring only to Exhibit A. But that Exhibit does not support any inference of disclosure of trade secret

1	Abhyanker Decl. ¶ 5 (emphasis added).	information—stating only that Sood responded to a friends and family survey of interest in using local social networking.
2		
3		Best evidence. Fed. R. Evid. 1001, 1002.
4		Abhyanker describes the existence and purported effects of legal agreements between LegalForce and Sood without attaching the actual agreements.
5		The instruments referred to are themselves the best evidence, and Abhyanker’s description and characterization of them should be excluded.
6		
7	<u>OBJECTION NUMBER 5</u>	<u>GROUND FOR OBJECTION NUMBER 5:</u>
8	“Before disclosing my concept and associated trade secrets to Sood and Big Circle Media, I required them to execute and [sic] Independent Contractor Agreement and Non-Disclosure Agreement , which were also executed on September 21, 2006. The agreements required Sood and Big Circle Media to keep my LegalForce.com and Nextdoor.com concepts and all the accompanying details and work product relating to it confidential.”	Best evidence. Fed. R. Evid. 1001, 1002.
9	Abhyanker Decl. ¶ 8 (emphasis added).	Abhyanker describes the existence and purported effects of legal agreements between LegalForce and Counterdefendant Sood without attaching the actual agreements. The instruments referred to are themselves the best evidence; Abhyanker has provided no explanation for not including them; and his description and characterization of them should be excluded.
10		
11		
12		
13		
14		
15		
16	<u>OBJECTION NUMBER 6</u>	<u>GROUND FOR OBJECTION NUMBER 6:</u>
17	“Sood also personally worked with Fenwick attorneys, in that firm’s offices, to prepare these agreements , which he then breached. Sood also worked with Fenwick to negotiate and execute the non-disclosure and confidentiality provisions related to the investment agreements which Fenwick negotiated with outside investors Warren Myer (who had purchased a LegalForce \$125,000 convertible note) and Jeffrey Drazen (the first outside investor in both LegalForce, Inc. and in Fatdoor, Inc.).”	No foundation, no personal knowledge. Fed. R. Evid. 602. Abhyanker provides no foundation to know what Sood personally did with Fenwick, or that Sood did anything at Fenwick’s offices, or that Sood “then breached” any agreement. To the contrary, Sood has negated any basis for Abhyanker’s personal knowledge, testifying that he did not work directly with Fenwick or visit their offices. <i>See</i> Sood Declaration ¶ 5. <i>See also</i> Objection 4 (addressing lack of evidence of any disclosure of trade secret information, as necessary to establish breach).
18	Abhyanker Decl. ¶ 9 (emphasis added).	Best evidence. Fed. R. Evid. 1001, 1002.
19		Abhyanker describes the existence and purported effects of legal agreements between LegalForce and Counterdefendant Sood without attaching the actual agreements. The instruments referred to are themselves the best evidence; Abhyanker provides no basis for not introducing them; and Abhyanker’s description and characterization of them should be excluded.
20		
21		
22		
23		
24		
25		
26		
27		
28		

	<p>Inadmissible legal conclusion. Fed. R. Evid. 701. Additionally, Abhyanker's contention that Sood "breached" the agreements is an inadmissible legal conclusion. Fed. R. Evid. 701 (precluding lay opinion); <i>Pierce v. Kaiser Found. Hospitals</i>, CV 09-03837 WHA, 2010 WL 4590930, at *8 (N.D. Cal. Nov. 4, 2010) <i>aff'd</i>, 470 F. App'x 649 (9th Cir. 2012) (declaration that opponent "breached" agreement or "violated" laws is inadmissible legal conclusion).</p>
<p><u>OBJECTION NUMBER 7</u></p> <p>"Because Drazan and I remained equity holders in LegalForce, Inc., purposefully excluded from this transfer (following Fenwick's counsel) were all technologies related to LegalForce and Nextdoor, including the exclusion of the LegalForce/Nextdoor Trade Secrets and the Nextyard, Nextlawn, and LegalForce domains. Drazan's attorney Daniel Hansen drafted this agreement after consulting Fenwick & West." Abhyanker Decl. ¶ 13 (emphasis added).</p>	<p><u>GROUND FOR OBJECTION NUMBER 7:</u></p> <p>No foundation or personal knowledge. Fed. R. Evid. 602. Abhyanker's declaration characterizes purported consultations that unnamed persons at Fenwick & West supposedly had with a third party attorney, Daniel Hansen, when Hansen performed legal work. Abhyanker does not contend that he was a party to or observed any such consultation, and thus lacks personal knowledge upon which to claim any involvement by Fenwick.</p> <p>Hearsay. Fed. R. Evid. 801, 802. To the extent that Abhyanker contends that he heard indirectly of any supposed consultation by Fenwick, such information is inadmissible hearsay.</p> <p>Best evidence. Fed. R. Evid. 1001, 1002. Abhyanker describes the existence and purported effects of legal agreements purportedly excluding rights from transfer, without attaching the actual agreements. The instruments referred to are themselves the best evidence; Abhyanker provides no basis not to introduce them; and Abhyanker's description and characterization of them should be excluded.</p>
<p><u>OBJECTION NUMBER 8</u></p> <p>"The assignment only covered technology related to the Fatdoor concept, and specifically excluded all assets owned by LegalForce, Inc. (of which I and Drazan were shareholders) including my LegalForce/Nextdoor Trade Secrets and domains of LegalForce.com, Nextyard.com, and Nextlawn.com based around a private social network for neighborhood because of recommendations by Fenwick & West in their representation of LegalForce, Inc." Abhyanker Decl. ¶ 14 (emphasis added).</p>	<p><u>GROUND FOR OBJECTION NUMBER 8:</u></p> <p>No foundation or personal knowledge. Fed. R. Evid. 602. Abhyanker's declaration characterizes purported recommendations that unnamed persons at Fenwick & West supposedly made when Hansen performed legal work. Abhyanker does not contend that he was a party to or observed any such recommendation, and thus lacks personal knowledge upon which to claim any involvement by Fenwick.</p> <p>Hearsay. Fed. R. Evid. 801, 802. To the extent that Abhyanker contends that he heard indirectly of any supposed recommendation by Fenwick,</p>

1		such information is inadmissible hearsay.
2		Best evidence. Fed. R. Evid. 1001, 1002.
3		Abhyanker describes the existence and purported
4		effects of an assignment purportedly excluding
5		rights from transfer, without attaching the actual
6		assignment. The instruments referred to are
7		themselves the best evidence; Abhyanker provides
8		no basis not to introduce them; and Abhyanker's
9		description and characterization of them should be
10		excluded.
11	<u>OBJECTION NUMBER 9:</u>	<u>GROUND FOR OBJECTION NUMBER 9:</u>
12	"In or about May 2007, a convertible note	Best evidence. Fed. R. Evid. 1001, 1002.
13	holder in LegalForce, Inc. through an	Abhyanker describes the existence and purported
14	instrument prepared by and negotiated by	effects of a convertible note owned by Mr.
15	Fenwick & West, Mr. Warren Myers	Meyers; board minutes; and disclosures in
16	complained to the Fatdoor Board of	connection with a Series B financing (prepared by
17	Directors that he was concerned that	Mr. Hansen). The documents referred to are
18	Nextdoor and LegalForce owned	themselves the best evidence; Abhyanker provides
19	technologies and trade secrets were used or	no basis not to introduce them; and Abhyanker's
20	planning to be used in Fatdoor, Inc. This	description and characterization of them should be
21	dispute was disclosed to Series B investors	excluded.
22	in Fatdoor, Inc. in board minutes and	No foundation or personal knowledge. Fed. R.
23	disclosures in conjunction with Series B	Evid. 602. Abhyanker characterizes that a
24	financing. A decision was made that if the	purported "decision was made" without describing
25	Nextdoor domain would be desired for	who made it or how he has personal knowledge of
26	Fatdoor again, permission from the	it. Abhyanker also states that "it was stated" "that
27	LegalForce, Inc. equity investors and	Mr. Myers now understood" certain facts, without
28	convertible note holders, including Warren	describing who so stated or how Mr. Abhyanker
	Myer would first be required through	had personal knowledge of either such statement
	Fenwick & West, which represented the	or understanding.
	interests of LegalForce, Inc. These	Hearsay. Fed. R. Evid. 801, 802. Abhyanker
	disclosures were prepared by Daniel	testimony as to purported out-of-court complaints
	Hansen, and it was stated that Mr. Myers	by Mr. Meyers is hearsay. His testimony that "a
	now understood that the original LegalForce	decision was made" by an unnamed source is also
	trade secrets including the Nextdoor name	based on hearsay unless he made that decision
	as useable with a private social network for	(which his testimony does not state). His
	neighbors remained property of LegalForce,	testimony that "it was stated" by an unnamed
	Inc." Abhyanker Decl. ¶15 (emphasis	source that Mr. Myers understood certain facts is
	added).	double hearsay from an unidentified speaker.

OBJECTION NUMBER 10:

“**Upon information and belief**, Sood had disclosed my bidding [for the nextdoor.com domain] to the Plaintiff (See Exhibit A).”
Abhyanker Dec. ¶16 (emphasis added).

GROUND FOR OBJECTION NUMBER 10:

No foundation or personal knowledge. Fed. R. Evid. 602. Testimony on information and belief is impermissible, especially where the only cited basis for the purported belief, Exhibit A, does not support the allegation.

Dated: May 9, 2013

FENWICK & WEST LLP

By: /s/ Laurence F. Pulgram
Laurence F. Pulgram

Attorneys for Plaintiff and Counterdefendant
NEXTDOOR.COM, INC. and Counterdefendant
PRAKASH JANAKIRAMAN

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO